



[BILLING CODE: 6750-01S]

FEDERAL TRADE COMMISSION

[File No. 172 3025]

BLU Products, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order -- embodied in the consent agreement -- that would settle these allegations.

DATES: Comments must be received on or before May 30, 2018.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write: “BLU Products, Inc.” on your comment, and file your comment online at <https://ftcpublic.commentworks.com/ftc/bluproductsconsent> by following the instructions on the web-based form. If you prefer to file your comment on paper, write “BLU Products, Inc.” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jah-Juin Ho (202-326-3463) and Ryan Mehm (202-326-2918), Bureau of Consumer Protection, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 30, 2018), on the World Wide Web, at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before May 30, 2018. Write “BLU Products, Inc.” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <https://www.ftc.gov/policy/public-comments>.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/bluproductsconsent> by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you prefer to file your comment on paper, write “BLU Products, Inc.” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex D), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with

FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before May 30, 2018. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (“Commission”) has accepted, subject to final approval, an agreement containing a consent order from BLU Products, Inc. (“BLU”) and individual Respondent Samuel Ohev-Zion (collectively, “Respondents”).

The proposed consent order (“proposed order”) has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days,

the Commission again will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

BLU is a mobile device manufacturer that sells smartphone and other mobile devices to consumers through retailers such as Amazon, Walmart, and Best Buy. Samuel Ohev-Zion is an owner and the President and CEO of BLU. Individually or in concert with others, Mr. Ohev-Zion controlled or had authority to control, or participated in the acts and practices alleged in the proposed complaint.

Respondents purchase the smartphones they sell to consumers from Original Device Manufacturers ("ODMs"). ODMs manufacture and customize mobile devices branded with the BLU name based on instructions provided by Respondents. As part of this process, since at least 2015, in order to provide firmware updating services, BLU has licensed software from ADUPS Technology Co., LTD ("ADUPS") and directed ODMs to preinstall this software on Respondents' mobile devices.

ADUPS is a China-based company that offers advertising, data mining, and firmware over-the-air ("FOTA") update services to mobile and Internet of Things connected devices. FOTA updates allow device manufacturers to issue security patches or operating system upgrades to devices over wireless and cellular networks.

Until at least November 2016 the ADUPS software on BLU devices transmitted personal information about consumers to ADUPS' servers without consumers' knowledge and consent, including the full contents of text messages, real-time cellular tower location data, call and text message logs with full telephone numbers, contact lists, and a list of applications used and installed on each device. ADUPS software collected

and transmitted consumers' text messages to its servers every 72 hours. ADUPS software also collected consumers' location data in real-time and transmitted this data back to its servers every 24 hours.

The Commission's proposed two-count complaint alleges that Respondents violated Section 5(a) of the Federal Trade Commission Act. The first count alleges that Respondents deceived consumers about BLU's data collection and sharing practices by falsely representing in BLU's privacy policy that they limit the disclosure of users' information to third-party service providers only to the extent necessary to perform their services or functions on behalf of BLU and not for other purposes. Contrary to the privacy policy, personal information from BLU devices sold by Respondents was transmitted to ADUPS that was not needed to perform its services or functions on behalf of BLU, including FOTA updates.

The second count alleges that Respondents deceived consumers about BLU's data security practices by falsely representing that they implemented appropriate physical, electronic, and managerial security procedures to protect the personal information provided by consumers. The proposed complaint alleges that Respondents did not implement appropriate physical, electronic and managerial security procedures. For example, the proposed complaint alleges that Respondents failed to implement appropriate security procedures to oversee the security practices of their service providers, such as by: (1) failing to perform adequate due diligence in the selection and retention of service providers; (2) failing to adopt and implement written data security standards, policies, procedures or practices that apply to the oversight of their service providers; (3) failing to contractually require their service providers to adopt and

implement data security standards, policies, procedures or practices; and (4) failing to adequately assess the privacy and security risks of third-party software, such as ADUPS.

The proposed order contains provisions designed to prevent Respondents from engaging in the same or similar acts or practices in the future.

Part I of the proposed order prohibits Respondents from misrepresenting: (1) the extent to which they collect, use, share, or disclose any personal information; (2) the extent to which consumers may exercise control over the collection, use, or disclosure of personal information; and (3) the extent to which they implement physical, electronic, and managerial security procedures to protect personal information.

Part II of the proposed order requires Respondents to establish and implement, and thereafter maintain, a comprehensive security program that is reasonably designed to: (1) address security risks related to the development and management of new and existing covered devices, and (2) protect the security, confidentiality, and integrity of personal information. The program must be fully documented in writing and must contain administrative, technical, and physical safeguards appropriate to Respondents' size and complexity, the nature and scope of Respondents' activities, and the sensitivity of the covered device's function or the personal information.

Part III of the proposed order requires Respondents to obtain an assessment and report from a qualified, objective, independent third-party professional covering the first one hundred eighty (180) days after issuance of the order and each 2-year period thereafter for 20 years after issuance of the order. Each assessment must, among other things: (1) set forth the administrative, technical, and physical safeguards that Respondents have implemented during the reporting period; (2) explain how such

safeguards are appropriate to Respondents' size and complexity, the nature and scope of Respondents' activities, and the sensitivity of the covered device's function or the personal information; (3) explain how the safeguards implemented meet or exceed the protections required by Part II of the proposed order; and (4) certify that Respondents' security program is operating with sufficient effectiveness to provide reasonable assurance that the security of covered devices and the privacy, security, confidentiality, and integrity of personal information is protected.

Part IV of the proposed order requires Respondents, prior to collecting or disclosing any covered information, to: (A) clearly and conspicuously disclose to the consumer, separate and apart from "privacy policy," "terms of use" page, or similar document, (1) the categories of covered information that Respondents collect, use, or share, (2) the identity of any third parties that receive any covered information, and (3) all purposes for Respondents' collection, use, or sharing of covered information; and (B) obtain the consumer's affirmative express consent.

Parts V through IX of the proposed order are reporting and compliance provisions. Part V requires acknowledgment of the order and dissemination of the order now and in the future to persons with supervisory responsibilities and all employees, agents, and representatives who participate in conducted relating to the subject matter of the order. Part VI ensures notification to the FTC of changes in corporate status and mandates that Respondents submit an initial compliance report to the FTC. Part VII requires Respondents to retain documents relating to its compliance with the order for a five (5) year period. Part VIII mandates that Respondents make available to the FTC

information or subsequent compliance reports, as requested. Part IX is a provision “sunsetting” the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the proposed order. It is not intended to constitute an official interpretation of the complaint or proposed order, or to modify in any way the proposed order’s terms.

By direction of the Commission.

Donald S. Clark,
Secretary.

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